No. 85-1172

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

WILLIAM G. MITCHELL,

Petitioner,

v.

PEPSI-COLA GENERAL BOTTLERS, INC.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

BRIEF OF RESPONDENT PEPSI-COLA GENERAL BOTTLERS, INC. IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

WILLIAM R. SULLIVAN, JR.*
JOHN L. COLLINS
SEYFARTH, SHAW, FAIRWEATHER
& GERALDSON
Suite 4200
55 East Monroe Street
Chicago, Illinois 60603
(312) 346-8000
Attorneys for Respondent

**Counsel of Record*

Pandick Midwest, Inc., Chicago • 733-6000

COUNTERSTATEMENT OF QUESTION PRESENTED FOR REVIEW

Whether An Employee May Avoid Federal Question Jurisdiction Over A Labor Dispute Cognizable Under Section 301 Of The Labor Management Relations Act, 29 U.S.C. § 185(a), By Characterizing His Claim As A Common Law Tort?

STATEMENT REQUIRED BY RULE 28.1

Pepsi-Cola General Bottlers, Inc. is a wholly-owned subsidiary of IC Products Company, which, in turn, is a wholly-owned subsidiary of IC Industries, Inc. IC Industries, Inc. has no parent company.

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Respondent, PEPSI-COLA GENERAL BOTTLERS, INC., opposes the Petition for a Writ of Certiorari because the decision below involves application of federal labor law principles which have long been settled by this Court, and because the Seventh Circuit's decision does not conflict with the decisions of this Court or of other courts of appeals.

COUNTERSTATEMENT OF THE CASE

Petitioner William G. Mitchell ("Mitchell") was formerly employed as a mechanic by Respondent Pepsi-Cola General Bottlers, Inc. (hereinafter referred to as "Pepsi") (App. 23). On May 18, 1982, Pepsi forced Mitchell to resign for misappropriating tools (App. 24). Mitchell was a member of the International Association of Machinists and Aerospace Workers, Automobile Mechanics Union Local 701 (hereinafter referred to as "the Union") (App. 24). The collective bargaining agreement between Pepsi and the Union provided that employees would only be discharged for just cause (App. 49-50) and that disputes between the parties would be subject to a grievance procedure culminating in binding arbitration (App. 57-58). Mitchell filed a grievance and requested a hearing to determine the validity of his involuntary resignation. His grievance was denied (App. 4).

Two years later, in May, 1984, Mitchell sued Pepsi in Illinois state court. Count I of his complaint alleged that he was a union member covered by the collective bargaining agreement, and that Pepsi wrongfully accused him of stealing tools, thereby forcing his resignation (App. 23-25). Count II alleged that Pepsi defamed Mitchell (App. 25). Mitchell amended his complaint on May 18, 1984 to include a third count against both Pepsi and the Union alleging that they conspired to deny Mitchell collective bargaining rights (App. 26-28).

On June 14, 1984, Pepsi and the Union removed the action to federal court pursuant to 28 U.S.C. § 1441 on the basis that Mitchell's claim arose under Section 301 of the Labor Management Relations Act of 1947, 29 U.S.C. § 185 ("Section 301") (App. 82-89.). On June 18, 1984, four days later, Mitchell filed a "Notice of Voluntary Dismissal" of Count III pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure. Pepsi filed an answer and affirmative defenses on June 21, 1984.

Mitchell then moved to remand the case to state court contending that his claim in Count I of the complaint did not arise under federal law. The district court held that Mitchell's claim arose under Section 301, was properly removed, and thus denied the motion (App. 15-22). The court then dismissed Mitchell's complaint without prejudice for failure to plead exhaustion of the collectively bargained grievance and arbitration procedure, and failure to plead the Union breached its duty of fair representation, both necessary elements of a Section 301 action (App. 15-22). *Mitchell v. Pepsi-Cola General Bottlers, Inc., et al.*, No. 84 C 5054 (N.D. Ill. Oct. 26, 1984). The Seventh Circuit affirmed (App. 2-14). *Mitchell v. Pepsi-Cola General Bottlers, Inc., et al.*, 772 F.2d 342 (7th Cir. 1985).

ARGUMENT—REASON WHY THE WRIT SHOULD BE DENIED

The Writ Should Be Denied Because The Decision Below Is Fully Consistent With The Decisions Of This Court And Presents No Conflict With Decisions Of Other Circuit Courts of Appeals.

This case involves application of the long standing principle that an employee cannot avoid federal jurisdiction over a labor dispute cognizable under Section 301 of the Labor-Management Relations Act, 29 U.S.C. § 185(a), merely by characterizing his claim as a common law tort. This Court reaffirmed this principle most recently in *Allis-Chalmers Corp. v. Lueck*, ____ U.S. ____, 105 S. Ct. 1904 (1985), holding that "when resolution of a state-law claim is substantially dependent upon analysis of the terms of an agreement made between the parties in a labor contract, that claim must either be treated as a § 301 claim, see *Avco Corp. v. Aero Lodge 735*, 390 U.S. 557, 88 S.Ct. 1235, 20 L.Ed.2d 126 (1968), or dismissed as pre-empted by federal labor-contract law." 105 S. Ct. at 1916. Otherwise, the Court explained, employees could circumvent collectively bargained grievance and arbitration procedures, thus frustrating the strong federal labor policy favoring settlement of labor disputes by arbitration:

> Since nearly any alleged willful breach of contract can be restated as a tort claim for breach of a good-faith obligation under a contract, the arbitrator's role in every case could be bypassed easily if § 301 is not understood to pre-empt such claims. Claims involving vacation or overtime pay, work assignment, *unfair discharge*—in short, the whole range of disputes traditionally resolved through arbitration—could be brought in the first instance in state court by a complaint in tort rather than in contract. A rule that permitted an individual to sidestep available grievance procedures would cause arbitration to lose most of its effectiveness, *Republic Steel Corp. v. Maddox*, 379 U.S. 650, 653, 85 S.Ct. 614, 616, 13 L.Ed.2d 580 (1965), as well as eviscerate a central tenet of federal labor-contract law under § 301 that it is the arbitrator, not the court, who has the responsibility to interpret the labor contract in the first instance. (Emphasis supplied.)

Allis-Chalmers Corp. v. Lueck, ____ U.S. ____, 105 S. Ct. 1904, 1915-16 (1985).

In furtherance of this principle, this Court has made clear that where a claim underlying a state court complaint is subject to resolution under a collective bargaining agreement, the action "arises under" Section 301 and is removable on the basis of federal question jurisdiction, 28 U.S.C. § 1441(b), *regardless* of how the claim is characterized in the complaint. *Franchise Tax Board v. Construction Laborers Vacation Trust*, 463 U.S. 1, 103 S. Ct. 2841, 2853-54 (1983); *Avco Corp. v. Aero Lodge No. 735*, 390 U.S. 557, 560 (1968). Circuit courts have uniformly sustained removal of such state court actions on the basis of federal question jurisdiction under Section 301. *See, e.g., Oglesby v. R.C.A. Corp.*, 752 F.2d 272 (7th Cir. 1985); *Olguin v. Inspiration Consolidated Copper Co.*, 740 F.2d 1468 (9th Cir. 1984); *Eitmann v. New Orleans Public Service, Inc.*, 730 F.2d 359 (5th Cir. 1984), *cert. denied*, ____ U.S. ____, 105 S. Ct. 433 (1984); *see also*, Note, *Federal Preemption, Removal Jurisdiction and the Well-Pleaded Complaint Rule*, 51 U. Chi. L. Rev. 634 (1984).

Here, the Seventh Circuit Court of Appeals simply applied the foregoing principles in evaluating Mitchell's complaint. The court recognized that the gravaman of Mitchell's complaint was his forced resignation from employment. The court then determined that this constructive discharge implicated the "just cause" provision of the collective bargaining agreement, fell within the scope of the grievance and arbitration procedure, and thus arose under Section 301. Having determined that this is a Section 301 case, the Seventh Circuit correctly concluded that removal was proper under 28 U.S.C. § 1441(b), and that dismissal was appropriate because Mitchell had failed to exhaust the grievance and arbitration procedure. *Vaca v. Sipes*, 386 U.S. 171 (1967).

The Seventh Circuit Court of Appeals, therefore, did not decide an important question of federal law which has not been decided by this Court, nor does its decision conflict with applicable decisions of this Court or other circuit courts of appeals. Mitchell simply *disagrees* with the Seventh Circuit's and this Court's application of settled federal law.

CONCLUSION

For the reasons stated, the Petition should be denied because the decision below is fully consistent with the decisions of this Court and the other courts of appeals concerning federal court jurisdiction, removal and preemption.

Respectfully submitted,

WILLIAM R. SULLIVAN, JR.*
JOHN L. COLLINS
SEYFARTH, SHAW, FAIRWEATHER
& GERALDSON
Suite 4200
55 East Monroe Street
Chicago, Illinois 60603
(312) 346-8000
Attorneys for Respondent

February 5, 1986

**Counsel of Record*